



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

RIN-3150-AI61

[NRC-2015-0120]

Selection of Material Balance Areas and Item Control Areas

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG-5057, "Special Nuclear Material Control and Accounting System for Non-Fuel Cycle Facilities." This DG provides guidance to licensees and applicants on the NRC's regulations concerning the material control and accounting of special nuclear material. The need for this guidance arises from an ongoing NRC rulemaking to revise these regulations, as discussed further in Section II below. The scope of DG-5057 covers nuclear power plants and all non-fuel cycle facilities.

DATES: Submit comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specified subject):

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0120. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tom Pham, Office of Nuclear Material Safety and Safeguards, 301-287-9132, e-mail: Tom.Pham@nrc.gov, or, Mekonen Bayssie, Office of Nuclear Regulatory Research, 301-251-7489, e-mail: mekonen.bayssie@nrc.gov. U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2015-0120 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document, by the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0120.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if available in ADAMS) is provided the first time that a document is references. The draft regulatory guide is available electronically under ADAMS accession number ML15015A271. The regulatory analysis may be found in ADAMS under Accession No. ML15015A294.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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B. Submitting Comments

Please include Docket ID NRC-2015-0120 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission

available to the public in this docket.

The NRC cautions you not to include identifying or contact that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is conducting a rulemaking to revise part 74 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Material Control and Accounting of Special Nuclear Material," and in this regard published on November 8, 2013 (78 FR 67225) a proposed rule for comment. The rulemaking to revise the material control and accounting (MC&A) regulations was initially authorized by a 2009 staff requirements memorandum (SRM) to SECY-08-0059, "Rulemaking Plan: Part 74 - Material Control and Accounting of Special Nuclear Material." The SRM and SECY-08-0059 may be found in ADAMS under Accession Nos. ML090360473 and ML080580307, respectively. The SRM directed the NRC staff to revise existing MC&A guidance documents to reflect any new and revised requirements.

The draft guidance that the NRC is issuing for public comment is a DG in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the

public technical information, such as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled "Special Nuclear Material Control and Accounting System for Non-Fuel Cycle Facilities," is temporarily identified by its task number, DG-5057. This DG-5057 is proposed revision 3 of RG 5.29. Revision 3 of RG 5.29 considers conformance with the provisions of American National Standards Institute (ANSI) N15.8 2009, "Methods of Nuclear Material Control – Material Control Systems – Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants," to be an acceptable approach to meet the MC&A requirements in subpart B of 10 CFR part 74 at nuclear power plants. DG-5057 expands the scope of the guidance to cover the proposed new requirements in subpart A of 10 CFR part 74 and to cover all non-fuel cycle facilities.

III. Backfitting and Issue Finality

Draft Guide-5057 provides guidance on MC&A recordkeeping and reporting requirements, as set forth in 10 CFR part 74. The regulatory guidance held in this guidance provides methods that the NRC staff finds acceptable for an applicant or licensee to meet the requirements of the underlying NRC regulations. The issuance of the guidance in DG-5057 is not backfitting, as that term is defined in 10 CFR 50.109, 70.76, or 72.62, or inconsistent with the issue finality provisions in 10 CFR part 52, because information collection and reporting requirements with respect to material control and accounting are not included within the scope of the NRC's backfitting protections or part 52 issue finality provisions.

Applicants and potential applicants are not, with certain exceptions, protected by any

issue finality provisions under part 52. This is because the issue finality provisions under part 52, with certain exclusions discussed below, were not intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are whenever an applicant references a part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule, a standard design approval) with specified issue finality provisions. However, the scope of issue finality provided extends only to the matters resolved in the license or regulatory approval. Early site permits, design certification rules, and standard design approvals do not address or resolve compliance with material control and accounting requirements in 10 CFR part 74. Therefore, no applicant referencing an early site permit, design certification rule, or standard design approval is protected by relevant issue finality provisions with respect to the material control and accounting matters addressed in DG-5057.

Dated at Rockville, Maryland, this 8th day of May, 2015.

For the Nuclear Regulatory Commission.

Harriet Karagiannis, Acting Chief,
Regulatory Guidance and Generic Issues Branch,
Division of Engineering,
Office of Nuclear Regulatory Research.
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